



Child Welfare Information Gateway

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STATE
STATUTES
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Federal Title IV-E and State Adoption Assistance

Children with special needs who are adopted from foster care may qualify for adoption assistance, which is paid to adoptive families to help them defray expenses related to their child's need for ongoing therapies or treatments or to cover certain one-time expenses.¹ There are two major funding sources of adoption assistance or subsidies: the

¹ This publication presents a survey of how adoption assistance is addressed in State statutes. For a detailed description of the different types of assistance that may be offered by States, see the Information Gateway publication *Adoption Assistance for Children Adopted From Foster Care: A Factsheet for Families*, at www.childwelfare.gov/pubs/f_subsid.cfm.

Electronic copies of this publication may be downloaded at www.childwelfare.gov/systemwide/laws_policies/statutes/sneeds.cfm

To find statute information for a particular State, go to www.childwelfare.gov/systemwide/laws_policies/search/index.cfm

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Federal Title IV-E program under the Social Security Act, and State programs, which vary from State to State.²

Adoption subsidy programs are typically categorized by the manner in which they are funded. Under the Federal Adoption Assistance Program, Federal Title IV-E matching funds are given to States that provide adoption assistance payments to parents who adopt children with special needs (as defined by the State). The children must be eligible for Aid to Families with Dependent Children (AFDC)³ or Supplemental Security Income (SSI). In addition, the program authorizes Federal matching funds for States that reimburse the nonrecurring adoption expenses⁴ of adoptive parents of children with special needs, regardless of AFDC or SSI eligibility.⁵

Not all children who receive adoption assistance from States are eligible for Federal Title IV-E funds. The non-Title IV-E children's adoption subsidies are paid solely by the State in which their adoption agreement was signed (without Federal reimbursement).^{6,7} Adoption subsidies take various forms in different States and depend on the child's needs and the State agency's program. Six States⁸ provide subsidies for children in State custody regardless of the residency of the adoptive parents. Families interested in adopting a child with special needs should contact their local department of social services to determine what assistance is available in their State.⁹

² Joan H. Hollinger et al., *Adoption Law and Practice* § 9.02 (2001).

³ Note: When the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) went into effect, it abolished the AFDC program; however, the AFDC definition of "dependent child" that was in effect on July 16, 1996, remains as an eligibility requirement for adoption assistance.

⁴ "Nonrecurring adoption expenses" are expenses related to finalizing the adoption, such as home study fees, attorney's fees, travel expenses, etc.

⁵ 42 USC § 673 (2002); Committee on Ways and Means, U.S. House of Representatives, *The 2000 Green Book* (2000); <http://aspe.hhs.gov/2000gb/>.

⁶ Hollinger, *supra*.

⁷ In Ohio, the State adoption special services subsidy program was discontinued as of July 1, 2004, except for payments on behalf of a child for whom payments were being made prior to July 1, 2004. Federal payments for adoption assistance under Title IV-E will continue to be made through the State Department of Job and Family Services.

⁸ Arkansas, Colorado, Michigan, Mississippi, Montana, and South Carolina.

⁹ Delaware does not currently provide for an adoption assistance program in statute. However, the State does provide in statute for recognition of adoption assistance agreements from other States as part of their Interstate Compact on Adoption and Medical Assistance agreement.

Eligibility for Adoption Assistance

The Federal definition under Title IV-E for a child with disabilities has three parts, as set forth under the Title IV-E program (42 USC § 673), whereby the State must determine that all three of the following conditions exist:

- The child cannot or should not be returned to the home of the parents.
- There exists, with respect to the child, a specific factor, such as ethnic background, age, or membership in a sibling group that would make placement difficult. (Federal law does not provide an exhaustive list of special needs conditions and thereby allows the States much discretion in determining the definition of a child with special needs.)
- Reasonable efforts have been made for unsubsidized placement except where a specific adoptive placement¹⁰ is in the child's best interests.

For ongoing adoption assistance with Title IV-E funding, children with special needs must be considered AFDC- or SSI-eligible. However, in order to receive Federal funds for non-recurring adoption expenses, children need not be AFDC- or SSI-eligible.¹¹

For State funding, children must be eligible for adoption assistance according to State standards. Funded programs other than Title IV-E generally follow the Federal definition above when defining a child with special needs.

Limitation on Adoption Assistance

Although subsidies are available for children with special needs, such subsidies are not unlimited. For example, Federal law does not allow the financial status of the adoptive parents to be a factor in determining the child's eligibility under Title IV-E. However, State agencies consider the parents' circumstances and the needs of the child when establishing the subsidy amount under the Federal program. Moreover, under Title IV-E,

¹⁰ Twelve States (Alabama, Arizona, Arkansas, California, Connecticut, Florida, Kentucky, Maryland, New Jersey, Oklahoma, South Carolina, and West Virginia) and the Virgin Islands provide for specific exceptions to the reasonable efforts requirement if the child has formed an attachment to the foster parent and it is determined that disrupting that attachment would be detrimental to the child.

¹¹ Committee on Ways and Means, U.S. House of Representatives, *The 2000 Green Book* (2000), available at <http://aspe.hhs.gov/2000gb/>.

adoption assistance may not exceed the amount that is allowable under foster family care¹² or the reasonable fees for services in cases where special services are required. For State-funded subsidies, some States have financial means tests¹³ that determine the amount a prospective adoptive family may receive under State funding.¹⁴

For both federally funded and State-funded subsidies, agreements must be negotiated before the adoption is finalized. However, adoptive families may request adoption assistance after the adoption is finalized, and such requests may be approved under specific conditions, such as those listed below, based on the funding source. For State-funded subsidies, some States permit funding for requests made after finalization, provided that State-specific criteria are met. Federal Title IV-E funds may be available for monthly subsidy only for those children who meet Title IV-E eligibility criteria prior to finalization. However, at any point after finalization, adoptive parents may request a fair hearing, and assistance may be approved if one of the following situations has occurred:

- The State agency failed to notify parents of the availability of assistance.
- Assistance was denied based on an erroneous determination that the child did not meet special needs criteria.
- Relevant facts, which may have affected the special needs determination, were known but not presented to the adoptive parents prior to finalization.¹⁵
- A condition existed but was not discovered prior to finalization.

Termination or Modification of Adoption Assistance

Under Title IV-E, adoption assistance payments may continue until the child is age 18, or, at State option, until the child is age 21 if the child has a physical or mental disability that warrants

¹² http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=81.

¹³ Georgia, Kansas, Louisiana, Maine, Massachusetts, Minnesota, New Hampshire, and Washington currently require agencies to consider the parents' income when determining subsidy amounts.

¹⁴ Hollinger, *supra* at § 9.03.

¹⁵ http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=5.

continued assistance.¹⁶ Payments also terminate if the State determines that the parents are no longer legally responsible for the support of the child, or if the child is no longer receiving any support from such parents.¹⁷ For an exclusively State-funded subsidy, each individual State determines when such a subsidy shall terminate.

Payments may be readjusted according to the changing needs of the child and the adoptive family.¹⁸ In addition, some States provide separate subsidies or grants for special services,¹⁹ such as extraordinary medical treatment or other services needed by the child that regular assistance payments or programs like Medicaid do not cover.

Moreover, Federal law requires that States provide any individual whose claim for benefits is denied an opportunity to appeal and to receive a fair hearing before the appropriate State agency.²⁰

States determine how frequently the parents must be reevaluated for continued subsidy for funding channeled through both Federal and State sources. Most States evaluate adoptive parents annually to determine whether the need for continued assistance exists; however, some States evaluate such parents more or less frequently than once a year.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

¹⁶ 42 USC § 673 (2002).

¹⁷ http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=82.

¹⁸ 42 U.S.C. 673; See, e.g., Va. Code Ann. § 63.2-1302.

¹⁹ Connecticut, Louisiana, Michigan, and Washington provide separate subsidy payments for medical treatments or hospitalization. Illinois, Maryland, and New Hampshire offer special purpose grants for extraordinary expenses that maintenance subsidies are unable to cover.

²⁰ 42 U.S.C. § 671(a)(12).